



Testimony of Jack Kelly
American Legal Finance Association
Ohio Senate
Committee on Judiciary
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Chairman Manning, Vice Chairman McColley, Ranking Member Thomas and members of the Judiciary Committee, thank you for allowing me to address the committee. My name is Jack Kelly and I am the Managing Director of the American Legal Finance Association (ALFA).

By way of introduction, ALFA is a trade association consisting of 32 of the nation's leading consumer legal funding companies that do business throughout the United States. One of ALFA's first actions was establishing industry standards for the Consumer Legal Funding industry. The cornerstone of these best practices is transactional transparency and clear disclosure to consumers. As a result, all ALFA members ascribe to the ALFA Best Practices.

It is critical for the committee to know that ALFA members DO NOT PROVIDE FUNDS TO INDIVIDUALS FOR ANY COSTS, FEES, OR EXPENSES RELATED TO THE PROSECUTION OF LITIGATION. Therefore, a plaintiff can SOLELY use the funds provided by ALFA member companies for their personal life needs like rent, food, or other such expenses.

ALFA Best Practices 1) Prohibit any of the funds being used for the costs of the litigation or attorney fees 2) Prohibit the funding company from being involved in any decisions relating to the litigation 3) Prohibit funding companies from paying any referral fees 4) Prohibit funding companies using false or misleading advertising, and 5) Require attorney acknowledgment of all fundings.

I am here today to respectfully oppose Senate Bill 94. This bill fails to address the needs of consumers that have a personal injury claim and may need funds to provide for their basic needs such as housing and living expenses. The adoption of this bill would eliminate the ability of funding companies to assist consumers who have been injured and unable to work through no fault of their own. As written, this legislation would eliminate the option provided through Consumer Litigation Funding. Injured persons who cannot rely on family and don't have access to bank loans could face foreclosure, eviction, or loss of their possessions, such as automobiles.

Consumer litigation funding is currently regulated in Ohio. Over the years thousands of Ohioans have availed themselves of such funding in their pursuit of fair and equitable claims for personal injuries. During that time few if any complaints have been made about such transactions. Why then is this legislation needed. Its simple to stop Ohioans from being able to obtain funds to help cover their life needs while they await a fair and equitable disposition of their case.



I want to begin by addressing misconceptions and misstatements that have been made about the consumer legal funding industry and the falsity presented that this legislation is about consumer protection.

First, consumer legal funding does not create or increase frivolous litigation. As I stated earlier, ALFA members DO NOT provide funds unless the plaintiff has a bona fide claim and is represented by an attorney and prohibits any of the funds to be used to pay attorney fees or any cost related to their case. These cases are already filed before a plaintiff seeks funds for their personal life needs. Funding a frivolous case is against the financial interests of a consumer legal funding company as they would lose the funds they provide to the consumer.

Second, Legal Funding enables a plaintiff to provide for life needs to prevent an eviction, foreclosure, or car repossession. For example, 78% of consumer legal funding is used to avoid foreclosure, nearly 7% for auto payments, and almost 10% for food. Consumer legal funding does not fund the lawsuit or pay for class actions.

Third, consumer legal funding enables a plaintiff to get a fair settlement, not more than they deserve. A plaintiff often settles their case on the first offer simply because they have no funds to pay their basic needs. Because consumers are faced with these financial challenges, the first settlement offer is invariably a "low ball" offer. Those advocating for this legislation want to eliminate these fundings because low or unfair settlements are more profitable. These individuals cannot say they want to eliminate consumer legal funding, so they tell you that this is about consumer protection. That is not true. This legislation is a Trojan horse that looks like consumer protection but is in effect a ban of this practice that will stop consumer legal funding in Ohio which will only hurt Ohioans. Do not be misled by their claims.

Fourth, consumer legal funding is nonrecourse, and the consumer only pays the monies back if they receive funds in their case. Consumer legal funding companies assume all the risk. These fundings are risky 12 to 20 % of funded cases are lost or settle for substantially less than expected. If the plaintiff loses their case, the consumer owes nothing, and the legal funding company loses its money. Adjustments are made to the obligation if the case settles for substantially less than expected. A consumer cannot be required to pay back more than they receive in their case. Consumer legal funding is not a loan because a loan must be repaid. Therefore, consumer legal funding is a nonrecourse funding transaction and not a loan.

Fifth, if you adopt this legislation, Ohio consumers will be harmed. The proponents of this legislation will be the primary beneficiary because lowball/unfair settlements are more profitable than fair settlements. Consumer legal funding allows the consumer to get fair compensation.

If Ohio truly desires to create laws to provide consumer protection ALFA would welcome working with you to address your concerns. ALFA has led the charge in helping adopt sound consumer protections law in numerous states, including Indiana, Oklahoma, Utah, Nevada, Tennessee, Vermont, Maine, and Nebraska.



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So, what is so bad about this legislation? It's simple. Included in this bill is a provision that prohibits a funding company from assigning or securitizing the funding transaction. If adopted as written, this would shut down all fundings in Ohio as it would prohibit funding companies from accessing any capital for the transactions.

Plain and simple, it would shut off the spigot of funds for funding companies. That's the real intent of this legislation, not consumer protection. It's like saying you can have a car, but you can't have any gasoline to operate the vehicle.

Also, this legislation treats nonrecourse consumer legal funding transactions as a traditional recourse loan with full obligation to repay the loan. It imposes a maximum interest rate of 10% per year irrelevant of how long the funds may be repaid. The proponents of the legislation aim to eliminate this funding option for consumers, and they know that a rate of 10% eliminates the practice. Several years ago, West Virginia adopted this same rate. Within months of its adoption, ALFA members and other companies involved in this funding transaction stopped funding transactions in West Virginia and no longer provided funds to West Virginia consumers. The funding market was shut down, and the product in effect was prohibited.

This legislation is a lion in sheep's clothes; a Trojan horse masked as consumer protection. I ask you not to be fooled in its true intent: to eliminate these funding options for Ohio citizens who seek such funds to help provide a lifeline for their life needs. At the same time, they await just and equitable compensation for their injuries. If this law is truly about consumer protection, then where are the complaints directly from the consumers?

I ask you, Mr. Chairman, members of this committee, is eliminating these funding options what Ohio wants? Do you want to prevent Ohio citizens from choosing to decide if they need funds for their life needs to be able to get them? No, I think you want true consumer protection as states like Oklahoma and Utah have adopted. As written, this legislation has one goal to shut down consumer litigation funding in Ohio. ALFA and our members stand ready to work with the committee to adopt true consumer protection legislation.

Consumer legal funding provides consumers with a lifeline when they have nowhere else to turn. It enables a plaintiff to obtain the settlement they deserve and not be forced to accept an unfair offer. If you have questions or concerns about this industry, the ALFA members and I stand ready to work with you to address those concerns.